

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

**RECEIVED
SEP 24 4 30 PM '01
POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY**

**Complaint on First-Class Mail
Service Standards**

Docket No. C2001-3

**DOUGLAS F. CARLSON
RESPONSE TO ORDER NO. 1320**

September 15, 2001

Order No. 1320 initiated a proceeding to hear the complaint that I filed on First-Class Mail service standards.¹ The order asked me to state the number of days that I need for discovery. Order at 10. The order also asked me to indicate the earliest date on which I could submit evidence and to identify any other procedural requests. *Id.* Finally, the order granted my motion to amend my complaint. *Id.* at 7.

Discovery

I request five weeks (35 days) to file initial discovery requests. Follow-up discovery pursuant to Rule 26(a) should be permissible beyond the five-week period. In Docket No. C2001-1 and in this proceeding, the Postal Service controls most of the information necessary for me to present my case. A five-week discovery period was an appropriate amount of time in Docket No. C2001-1 for participants to collect information sufficient to present a case. Therefore, a five-week discovery period is appropriate for this proceeding as well.

If the provisions of the Administrative Procedure Act govern the hearing in Docket No. C2001-3, I will be entitled to conduct "such cross-examination as may be required for a full and true disclosure of the facts." 5 U.S.C. §§ 556(d). For this reason, I request specific authorization from the Commission to submit discovery requests both to the Postal Service as an institution and to Mr. Charles M. Gannon

¹ Order No. 1320 ("Order"), filed September 12, 2001.

specifically. Accompanying the Postal Service's earlier motion to dismiss my complaint² was a 37-paragraph declaration from Mr. Gannon.³ In the declaration, Mr. Gannon stated that he has been the national program manager for "USPS Service Standards." Declaration at 1, ¶ 2. Mr. Gannon also was the national project manager for the changes in service standards that are the subject of this complaint. *Id.* at 2, ¶ 2. Without a doubt, Mr. Gannon possesses considerable information relevant to the issues in this proceeding. For example, Mr. Gannon knows the extent, if any, to which the Postal Service considered the needs of customers in changing First-Class Mail service standards. Institutional interrogatories may not be sufficient to discover the information that lies within the knowledge and control of an apparently small group of individuals that Mr. Gannon led in his role as project manager. Discovery requests to Mr. Gannon will aid in resolution of the issues in this proceeding.

My request for authorization to submit discovery requests to Mr. Gannon is reasonable because the Postal Service has already effectively put Mr. Gannon forward as a witness. The Postal Service relied heavily on Mr. Gannon's sworn 37-paragraph declaration in attempting to convince the Commission to dismiss my complaint. A second, supplemental declaration showed up a short time later.⁴ Mr. Gannon's declarations already have framed some of the legal and factual issues in this complaint proceeding. A sworn declaration is hardly distinguishable from sworn testimony, and a witness who submits sworn testimony is subject to cross-examination. By the Postal Service's own choice, Mr. Gannon is now a central figure in this proceeding as a repository of knowledge of facts and information relevant to the issues in this complaint. I should be permitted to submit discovery requests to Mr. Gannon on issues within the scope of his declaration, if not within the scope of this complaint proceeding.

² Motion of the United States Postal Service to Dismiss Complaint, filed July 30, 2001 ("Motion to Dismiss").

³ Declaration of Charles M. Gannon, filed July 30, 2001 ("Declaration").

⁴ The Second Declaration of Charles M. Gannon appears in Reply of the United States Postal Service to the Answers of the Office of the Consumer Advocate and the Complainant in Opposition to the Motion to Dismiss at 6-9, filed August 21, 2001.

For these reasons, I submit that I cannot obtain a full and true disclosure of the facts unless I am authorized to submit discovery requests to Mr. Gannon.

Since Order No. 1320 did not specifically authorize discovery to commence, the five-week period should begin after the presiding officer issues a ruling authorizing discovery to begin. In addition, only after the presiding officer issues a ruling authorizing discovery to begin will I know whether my discovery strategy may include discovery requests to Mr. Gannon.

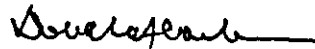
Evidentiary Presentation

Responses to discovery requests will be due not later than 14 days after the final deadline for filing discovery requests. Consistent with the procedural calendar that resulted in Docket No. C2001-1, I request a deadline for filing testimony that is eight weeks later than 14 days following the deadline for filing discovery requests.

Amendment of Complaint

Order No. 1320 granted my motion to amend my complaint. Order at 7. I am filing an amended complaint separately.

Respectfully submitted,

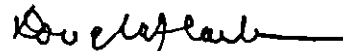


Dated: September 15, 2001

DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the Postal Service in accordance with section 12 of the *Rules of Practice*.



DOUGLAS F. CARLSON

September 15, 2001
Santa Cruz, California